

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RICHARD BRADLEY,

Defendant.


No. 05-CR-100-LRR

ORDER

This case is set for sentencing August 24, 2006. Upon reviewing each of Defendant's convictions in the Presentence Investigation Report ("PSIR"), the court disagrees that two of Defendant's prior convictions are predicate offenses under the Armed Career Criminal Act ("ACCA"), 18 U.S.C. § 924(e)(1). Specifically, the court notes that the Eighth Circuit Court of Appeals recently held that the breaking and entering of a vehicle is not a violent felony under the ACCA. *See United States v. Livingston*, 442 F.3d 1082, 1087 (8th Cir. 2006). Additionally, the court may not rely on arrest records to determine if Defendant's 1994 and 1997 burglary convictions (PSIR ¶¶ 45 and 46) qualify as predicate offenses under the ACCA.¹ *See United States v. Webster*, 442 F.3d 1065, 1069 (8th Cir. 2006).

IT IS SO ORDERED.

DATED this 23rd day of August, 2006.



LINDA R. READE
JUDGE, U. S. DISTRICT COURT
NORTHERN DISTRICT OF IOWA

¹ The court notes that both of these offenses are listed as predicate offenses in the Indictment.